

- (3) allow contracts and individual request for proposal responses; and
- (4) allow incumbent LECs to offer new access services with reduced regulatory requirements.²⁹

The ICC supports granting incumbent LECs the flexibility to deaverage access charges on a geographic basis and to adopt volume and term discounts, perhaps even before Phase 1. The ICC has already taken such steps for many services in Illinois. However, the ICC understands that the FCC may want to use such deaveraging and pricing flexibility as an incentive for price cap LECs to meet the Phase 1 criteria.

In addition to existing price cap protections, the ICC proposes that the FCC use TSLRIC or another measure of forward-looking costs as a price floor for access services where flexibility is granted, to avoid a situation where a noncompetitive access service subsidizes a more competitive access service. This would be consistent with the Illinois Public Utilities Act.³⁰ Further, contracts may be more appropriate only after it is shown that a certain level of competition exists. This would be generally consistent with the flexibility allowed for services classified as competitive under the Illinois Public Utilities Act.³¹ As discussed in Section II.A.6 above, the appropriate treatment of new services will depend on the type of new service.

²⁹NPRM at paras. 180-200.

³⁰220 ILCS 5/13-507.

³¹220 ILCS 5/13-509.

During Phase 2, the FCC would:

- (1) Eliminate price cap service categories within the trunking and traffic-sensitive baskets;
- (2) Allow differential pricing for access among different classes of customers;
- (3) End mandatory rate structure rules for transport and local switching; and
- (4) Consolidate traffic-sensitive and trunking baskets.³²

The ICC comments on only the second criterion at this time, but may address the other criteria in reply comments. The ICC supports differential pricing if certain conditions are met. In its Order in Docket 95-0201/0202, the ICC concluded that price discrimination promotes economic efficiency and deters uneconomic entry by competitors in situations where a company's average cost exceeds its marginal cost. The ICC also concluded that economic price discrimination between or within customer classes should be considered reasonable if:

1. Prices are set no higher than the price cap index permits, i.e., a price cannot increase by more than the change in the PCI plus 2% each year and the API cannot exceed the PCI;
2. Prices are set above Long Run Service Incremental Cost, with imputation of noncompetitive tariffed inputs; and
3. In the judgment of the ICC, the prices are fair based on a consideration of other policies.³³

If the FCC adopted similar guidelines, it could allow incumbent LECs to

³²NPRM at paras. 211-216.

³³ICC Order in Docket 95-0201/0202 at pp. 13-14.

charge differential prices prior to meeting the Phase 2 criteria.

With the establishment of substantial competition, the FCC would eliminate price regulation and tariffing of interstate access services, potentially on a service-by-service basis or only within certain geographic areas. The FCC asks for comment on how to recalculate price cap indices when one or more services in a basket are removed.³⁴ The ICC's guidelines may be helpful to the FCC.

When the ICC implemented alternative regulation for Ameritech Illinois and placed the company under price caps, the ICC adopted a mechanism that would allow it to accommodate the competitive reclassification of a service and its removal from the basket. In its Order, the ICC concluded that upon the competitive reclassification of an Ameritech Illinois service, the company shall remove the service from the API and recalculate the API for the affected customer categories. The ICC added that, if rate increases are required for a service when it is reclassified as competitive in order to satisfy state statutory imputation requirements, the rate increase shall be offset by a negative exogenous factor adjustment in the next price cap filing and the price cap index shall be reduced to reflect the increase in the competitive service rates.³⁵

2. Prescriptive Approach

In the prescriptive approach, the FCC would move access rates to forward-looking economic costs. The FCC invites comment on the goal of a prescriptive

³⁴NPRM at para. 154.

³⁵Order in Docket 92-0448, Appendix A at 6.

approach and on a number of proposals for specific requirements that could be incorporated into a prescriptive approach.³⁶

The FCC tentatively concludes that prescriptive access reform should be based on forward-looking costs.³⁷ Prices would be set based on TSLRIC studies, and the FCC discusses various possible ways to deal with the expected difference between forward-looking and embedded costs. The FCC recognizes that, "in the event an incumbent LEC can show its embedded costs are significantly higher than its forward looking costs, the [FCC] would be required to determine how much of the difference incumbent LECs should be given a reasonable opportunity to recover and the method for that recovery."³⁸

The prescriptive approach would launch regulation on a slippery slope of administratively burdensome micromanagement. The FCC contemplates that each State commission may be required to both evaluate TSLRIC studies and perform traditional embedded-cost rate cases for each price cap incumbent LEC. The national resources required for such an undertaking would be staggering. Further, it is not clear that, even with all that effort, regulators would arrive at better prices than would be obtained in a market-based approach. The ICC notes that, as costs decline over time, today's investment may be above future TSLRIC. As a result, the embedded cost recovery issue could become a perpetual problem. The ICC sees no need to construct an elaborate rate regulation that divides current

³⁶NPRM at para. 219.

³⁷NPRM at para. 222.

³⁸NPRM at para. 143.

embedded costs into TSLRIC amounts and excess amounts, tracks each, specifies a recovery mechanism for each, and updates and repeats the process over time. The FCC has concluded correctly that a market-based approach is preferable and should be adopted.

III. Coordination between Access Charge Reform and Separations Reform

The ICC does not believe that the FCC's NPRM adequately addresses separations reform and its interrelationship with access charge reform. It is important to coordinate separations and access charge reform, regardless of whether the FCC selects the prescriptive or market-based approach. Separations reform will have a significant impact on the amount of embedded local network costs that are allocated to the interstate jurisdiction. Overallocation of NTS costs to access charges assessed to IXCs is one of the basic problems with the current access charge structure. Attempts to move access charges to more appropriate levels without addressing this problem head-on can lead to convoluted "solutions" such as the ill-advised prescriptive approach.

The ICC realizes that a Federal-State Joint Board will address separations issues, and proposes that the FCC reconsider at that time the current separations mechanism that allocates local network costs to the interstate jurisdiction. While separations reform may be controversial, the move to competitive telecommunications markets requires wrenching changes in past regulatory practices. Separations reform is a change whose time has come.

IV. Coordination between Access Charge Reform and Universal Service Reform

In its NPRM, the FCC recognizes the interrelationship between access charge reform and universal service reform.³⁹ In these comments, the ICC has identified several aspects of the current access charge structure that constitute implicit subsidies contrary to the federal Act. The FCC should take the steps needed in this docket to eliminate these implicit subsidies and should reflect these changes as it resolves universal service issues in CC Docket No. 96-45.

V. Regulation of Terminating Access

In its NPRM, the FCC seeks comment on (1) whether and to what extent it should regulate the terminating access services of price cap incumbent LECs and non-incumbent LECs, (2) whether competition will have the same effect on terminating access rates as on originating access rates, and (3) the necessity of continued regulatory oversight of terminating access service where competition for originating access services exists.⁴⁰

In general, the ICC sees no compelling reason to provide special oversight of an incumbent LEC's terminating access services as opposed to other access services. The phased market-based approach looks at the state of competition on a service-by-service basis. Under this approach, the stages of flexibility would not be reached for terminating access until the competitive benchmarks are reached for that service.

³⁹NPRM at para. 244.

⁴⁰NPRM at paras. 272-276.

The ICC is concerned about any bottleneck access services provided by new LECs. Absent regulatory restrictions, it appears that new LECs will have the opportunity to levy excessive access charges on IXCs carrying calls to (or from) the new LECs' customers. In order to address this concern, the ICC recommends that restrictions be placed on the prices of access services of new LECs that the FCC determines to be bottleneck services. A reasonable approach would be to require that new LECs may not charge prices for such access services that are higher than the prices charged by the incumbent LEC for comparable access services.

New LECs should not be required to adopt the same rate structure as incumbent LECs, since their networks may be configured differently. Further, innovative rate structures should be encouraged rather than discouraged.

In order to minimize administrative burdens, a new LEC should be required to show that its access rates result in overall charges no higher than comparable rates of the incumbent LEC only upon an allegation to the contrary by another carrier.

VI. Treatment of Interstate Information Services

The FCC tentatively concludes that ISPs should not be required to pay access charges while the current interstate access system remains in place. It finds that the existing access charge system includes non-cost-based and inefficient rate structures that may slow the growth of the information services industry. The FCC seeks comment on its tentative conclusion.⁴¹

⁴¹NPRM at paras. 283, 285 and 288.

The ICC believes that ISPs should be required to compensate LECs for the costs they impose on the local network. At the same time, the ICC recognizes that current access charges are significantly above cost-based levels and that there are strong public policy reasons why ISPs should not be assessed current access charges. The ICC recommends that the current policy be reconsidered as access charges are reduced. The reallocation of NTS local loop costs from access charges assessed to IXCs, as recommended by the ICC in these comments, would lower access charges significantly, and the market-based approach proposed by the FCC can be expected to move access charges further toward competitive levels. The FCC should review its ISP policies regularly as access charges are reduced, and should allow LECs to assess access charges on ISPs as soon as it is determined that access charges reasonably reflect the underlying costs.

VII. Conclusion

The ICC commends the FCC for the NPRM's insightful analysis of current access charge problems and possible solutions. In these comments, the ICC supports many of the FCC's proposals. The ICC also recommends several important steps that go beyond the FCC's recommendations and that are needed to address underlying problems with the current access charge structure. The FCC should use this docket to make the access changes needed so that competition in the local and long distance markets is not impeded.

Respectfully submitted,

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